Debbie Beadle

From: Evan Maxim
Sent: Friday, September 28, 2012 9:58 AM
To: Kamuron Gurol; Susan Cezar
Cc: Kathy Curry; Carl de Simas; Debbie Beadle
Subject: FW: Testimony to PC
Attachments: On merging of amendments.docx

EXHIBIT NO. 218

Public comment

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From: Reid Brockway [mailto:waterat@comcast.net]
Sent: Thursday, September 27, 2012 8:38 PM
To: ECA
Subject: Testimony to PC

Please accept the attached document as testimony to the Planning Commission, and forward it to the Commissioners at your earliest convenience.

As the document explains, it is a more complete response to a question the PC asked me at the 9/20 meeting about merging proposed amendments 2-10, 2-11 and 2-12.

Thanks,
Reid

On the merging of proposed ECA amendments 2-10, 2-11, and 2-12

At the 9/20 meeting the Commission asked me whether amendments 2-10, 2-11, and 2-12 were sufficiently related that they could somehow be combined in a way that solves the problems they address. My somewhat off-the-cuff answer was yes. It is still a qualified "yes", but I think an accounting of the major problems with the current code and the extent to which each would address them would be helpful. That accounting follows. After that I offer conclusions as to the priority of the three amendments and how they might be combined into a lesser number.

First, here is a characterization of the problems addressed. There are basically three. Note that these are from the perspective of stream protection, but they also apply to varying degrees to other types of critical areas. These are general problems that are manifested in numerous specific issues in the code.

Problems:

Unduly restrictive buffers

Current one-size-fits-all stream buffers based on relatively crude stream Type categorization fail to take into account actual features and topography present and the true environmental value of the watercourse and associated habitat in question. As a consequence they unnecessarily burden property use, particularly in developed neighborhoods. And the addition of a building setback beyond the buffer compounds the problem. Derived from forest practices, these large buffers may be appropriate on some undeveloped land, but there needs to be provision for modifying buffers by applying science that pertains to urban settings and that addresses the true environmental value and range of protection required.

That the current buffer restrictions can be excessive is evidenced by Department of Commerce GMA Update found in Resource Guide on the city's ECA web page. Addressing the "Stream Typing" system our code currently is based on, that document states:

> The modeling system used to assess stream types was designed to address higher elevation forested areas, and not low lying and urbanizing areas.

That this is a problem needing correction is supported by RCW Chapter 36.70A, "Growth management – Planning by selected counties and cities", also found in the city's Resource Guide. 36.70A.020 (6), Property Rights, states:

> The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Our current code is arbitrary because it can impose a buffer where there may be no environmental benefit, and it is discriminatory because it prevents or inhibits a subset of residents from doing something most residents have a clear, unrestricted right to do. (See prior

testimony for examples, plus "Overview of restrictions associated with streams" submitted 9/18/12.)

Focus on development

Our code as written focuses on development; it fails to adequately distinguish new development from maintenance of already developed property. This results in absurd requirements like the need for a homeowner to get "state or federal permit or approval" to plant a non-native species in his yard, or to get a clearing and grading permit just to move a shrub. The grandfathering provisions that do exist in our code are scattered around, unclear, and inconsistent. (See testimony submitted to 4/19/12 PC meeting for specifics.) Further, neither "development" nor "maintenance" is currently defined in the code.

This can place an unreasonable burden on residents who, if they adhere to the letter of the code, must incur the hassle and expense of applying for permits and submitting studies to do what is totally within the unencumbered rights of other property owners not living near a stream. And it can encourage others who see the restrictions as unreasonable to do things "under the radar" and, unwittingly or out of resentment, actually do environmental damage.

Magic numbers

There are many "magic numbers" in our code – quantitative requirements that lack citations as to their basis in science or law and in many cases appear to be arbitrary. These are things like required widths of critical area buffers and percent reductions achievable by mitigation. An accounting of these was submitted to the city in April. 89 such numbers were tallied. 26 of these pertain to streams. These magic numbers are problematic in that they do not quantify target objectives and can impose constraints well beyond those that provide any environmental benefit. An example is a maximum allowed buffer reduction of 50% regardless of the true range of influence.

As with one-size-fits-all buffers addressed above, these arbitrary constraints that are decoupled from actual effect can violate the RCW 36.70A.020 (6) requirement that landowners be protected from arbitrary and discriminatory actions.

Note that AMEC's BAS review was not specific enough to address these individually.

Assessment:

The following is an assessment of the extent to which the three proposed ECA amendments address these problems. For reference, the amendments are characterized as follows:

2-10 – Allow the property owner or developer the option of buffer delineation in lieu of fixed-width buffers, in which qualified professionals evaluate site conditions to determine the actual range of influence on a watercourse based on topography, barriers such as buildings and roads, and the actual band of viable habitat present.

2-11 – Clearly distinguish between development and maintenance in stream related code. Modify regulations and associated procedures (e.g., permitting) to take into account the differences between raw land and developed urban neighborhoods as to the protections that are necessary and effective.

2-12 – Refine the criteria for stream buffers, beyond the current three stream Types and associated fixed buffer widths, to take into account the actual, varying environmental values of watercourses and associated habitats within a given Type, and to provide finer scaling of the protection required. Take into account flow rate and other science-based factors as appropriate.

	Unduly restrictive buffers	Focus on development	Magic numbers
2-10	Can provide (alternative) total solution	Can provide partial remedy Reorganization and clarification of code still needed	Can provide substantial relief for this problem Not all magic numbers pertain to buffers
2-11	Can provide partial remedy Some problems posed by unnecessarily large buffers will remain	Can provide total solution	Largely not a solution Magic numbers will still pose problems
2-12	Can provide partial remedy Does not account for topography or barriers to influence	Can provide partial remedy Reorganization and clarification of code still needed	Can provide partial remedy Not all magic numbers pertain to buffers

Conclusions:

Each amendment has its targeted problem area and distinct solution, but there is overlap. However even if these amendments are combined that would not address the three problems completely. That is because other proposed amendments – specifically one addressing grandfathering provisions and one addressing arbitrary quantitative constraints in the code – did not make the list of major policy recommendations. The measures they propose need to be implemented as well to affect a total solution.

However of the three amendments in question, 2-10 offers the most relief from the inequities in the current code as regards overprotection of watercourses and consequent human cost. If it were to be the only amendment implemented, all three problems would be diminished by virtue of the fact that it would minimize or sidestep many specific problems in the code, such as magic numbers that would no longer be relevant to a particular situation.

A better solution would be to implement both 2-10 and 2-11. That would solve the two problems they address plus make some magic numbers non-problematic.

2-12 is a different approach from 2-10 to the problem of unduly restrictive stream buffers. As envisioned, the primary difference would be that for 2-12 the city takes the active role in assessing environmental value, whereas in 2-10 it is an option available to the owner or developer. However so long as the implementation of 2-10 allows for recognizing gradations in watercourse/habitat value and applying proportionate protection, the objectives of 2-12 could be achieved, at least for the resident or developer willing to undertake buffer delineation.

Conversely, if 2-10 is not implemented, 2-12 becomes much more important, as it provides some degree of relief. However since 2-10 recognizes other factors besides environmental value, namely topography and barriers to influence, it is a superior solution.

The bottom line is that none of these amendments is a total substitute for the others, and all three taken together do not constitute a total solution to the three main problems described above. That total solution should also include the clarification of grandfathering provisions and the replacement of arbitrary numbers by science-based target objectives. But if a compromise is unavoidable, the priority relationship just described should be taken into account.